

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BARBARA STUART ROBINSON,

Plaintiff,

v.

BAY AREA RAPID TRANSIT DISTRICT,

Defendant.

Case No. 19-cv-00738-PJH

**ORDER**

Re: Dkt. Nos. 5, 13, 15

On April 15, 2019, the previously assigned judge, Magistrate Judge Donna M. Ryu, dismissed plaintiff's complaint pursuant to 28 U.S.C. § 1915(e). Dkt. 11 (the "April Order"). The April Order required plaintiff to file an amended complaint by April 30, 2019. Id. at 6.

On May 6, 2019, having received no amended complaint, Judge Ryu ordered the action reassigned to a district judge for final disposition and recommended that the newly-assigned district judge dismiss the action without prejudice for failure to prosecute. Dkt. 13 (the "R&R"). That same day, the action was assigned to this court. Dkt. 14.

After Judge Ryu issued her R&R, but still on May 6, 2019, plaintiff filed a "Motion to Consider Plaintiff's Amended Complaint," Dkt. 15, and an amended complaint, Dkt. 16. Plaintiff's motion explains that she did not receive the April Order in time to file an amended complaint because she had recently changed her mailing address. Dkt. 15. Plaintiff's amended complaint is nearly identical to the complaint Judge Ryu dismissed pursuant to § 1915(e). Compare Dkt. 1 with Dkt. 16. Moreover, unlike plaintiff's original complaint which attached a declaration containing all of plaintiff's factual allegations, plaintiff's amended complaint attached no such declaration and is thus largely devoid of

1 allegations related to the complained of conduct.

2 In light of the above, the court hereby ORDERS as follows:

- 3 (1) The court GRANTS plaintiff's motion for consideration of the  
4 amended complaint.
- 5 (2) The court DECLINES to adopt Judge Ryu's R&R.
- 6 (3) The court DISMISSES plaintiff's amended complaint pursuant to  
7 § 1915(e) for the same reasons stated in the April Order and  
8 because the amended complaint contains no factual allegations.
- 9 (4) If plaintiff wishes to proceed with this action, she shall file a second  
10 amended complaint no later than June 14, 2019. The second  
11 amended complaint, if any, must address the deficiencies identified  
12 in the April Order and must contain factual allegations. That is, the  
13 second amended complaint may not attempt to incorporate any of  
14 plaintiff's prior complaints or her previously filed declaration. Plaintiff  
15 is forewarned that if she fails to file a timely second amended  
16 complaint, the court will dismiss her action.
- 17 (5) Plaintiff's Motion for Permission for Electronic Case Filing, see Dkt.  
18 5, is GRANTED.

19 **IT IS SO ORDERED.**

20 Dated: May 23, 2019



21  
22 PHYLLIS J. HAMILTON  
United States District Judge